

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
LAURA L. CHAPMAN, Cal. Bar No. 167249
3 Email: lchapman@sheppardmullin.com
Four Embarcadero Center, Suite 1700
4 San Francisco, CA 94111-4109
Telephone: (415) 774-2965
5 Facsimile: (415) 434-3947

6 Counsel for Plaintiff
PLM Operations, LLC
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 PLM OPERATIONS, LLC,

12 Plaintiff,

13 v.

14 TERESITA FERNANDEZ, and DOES 1-5,
inclusive,

15 Defendants.
16

Case No. 3:21-cv-04669-JCS

**[PROPOSED] CONSENT JUDGMENT
AND PERMANENT INJUNCTION**

17
18 Plaintiff PLM Operations, LLC (“Plaintiff” or “PLM”) and Defendant Teresita Fernandez
19 (“Defendant”) (collectively the “Parties”) have entered into a written settlement agreement,
20 pursuant to which, among other things, they consent to entry of this Consent Judgment and
21 Permanent Injunction, to its prompt entry by the Court, and to each and every provision, order,
22 and decree herein.

23 NOW THEREFORE, upon consent of the parties hereto, IT IS ORDER, ADJUDGED,
24 AND DECREED:



25
26 **STIPULATED FACTS**



27 Plaintiff and Defendant, for the purpose of resolution of this matter, hereby stipulate to the
28 following facts as true and correct:

- (i) This action arises under the United States Lanham Act, 15 U.S.C. §§ 1114, 1125(a), the Copyright Act, 17 U.S.C. § 101 *et seq*, and California common law.
- (ii) This Court has subject matter jurisdiction over the Lanham Act claims pursuant to 15 U.S.C. § 1121 (actions arising under the Lanham Act), 28 U.S.C. § 1331 (federal question), 1338(a) (any Act of Congress relating to patents or trademarks), and 1338 (b) (any action asserting claim of unfair competition joined with a substantial and related claim under the trademark law). This Court has subject matter jurisdiction over the copyright claim pursuant to 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over the California state law claims pursuant to 28 U.S.C. § 1367 because those claims are so closely related to the federal claims asserted herein as to form part of the same case and controversy.
- (iii) Defendant is subject to personal jurisdiction in the Northern District of California because she engaged in the acts complained of below in this district, regularly transacts business in this district, and, on information and belief, resides here.
- (iv) Venue is proper pursuant to 28 U.S.C. § 1391(b).
- (v) Plaintiff owns and uses the trademark that consists of or contains the words “La Michoacana” and the following design in the United States:



- (vi) Plaintiff owns the following trademark registrations in the United States:

	
U.S. Trademark Registration 2,905,172 “Girl with Bar Trademark”	U.S. Trademark Registration 2,968,652 “Girl with Cone Trademark”

	
U.S. Trademark Registration 5,757,880 "Girl in Pink With Bar Trademark"	U.S. Trademark Registration 5,757,881 "Girl in Pink with Cone Trademark"

(vii) Plaintiff owns U.S. Copyright Registration Nos. VAu001126759 and VA0001858889, which includes the Girl in Pink with Cone design shown below:



(viii) Defendant is infringing on Plaintiff's marks by using the protected designs at various Northern California stores in the following representative ways:





- (vi) Defendant has violated Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a);
- (x) Defendant has violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and
- (xi) Defendant has violated the Copyright Act, 17 U.S.C. § 501.

PERMANENT INJUNCTION

Defendant, as well as each of her agents, servants, employees, attorneys, successors and assigns, and all those persons in active concert or participation with her hereby, are permanently enjoined from knowingly engaging in, committing, or performing, directly or indirectly, any or all of the following acts:

- (i) Using PLM's Girl with Bar, Girl with Cone, Girl in Pink with Bar, Girl in Pink with Cone, PLM's La Michoacana + Design Mark, or any other reproduction, counterfeit, copy or colorable imitation of marks owned by PLM or any other marks confusingly similar thereto, on or in connection with any goods or services;
- (ii) Using any simulation, reproduction, counterfeit, copy, or colorable imitation of PLM's trademarks or any other marks confusingly similar thereto, in connection with the promotion, advertisement, display, sale, offer for sale, manufacture, production, importation, circulation, or distribution of any products, including but not limited to the following designs:



- (iii) Making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade or public, or individual members thereof, to believe that any products manufactured, distributed, or sold by Defendants are in any manner associated or connected with Plaintiff, or are sold, manufactured, licensed, sponsored, approved, or authorized by Plaintiff;
- (iv) Copying, reproducing or displaying Plaintiff's copyrighted work; and
- (v) Effecting assignments or transfers, forming new entities or associations, or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs (i) through (v).

JUDGMENT IN PART AND DISMISSAL OF CLAIMS IN PART

Judgment is hereby entered in favor of PLM and against Defendant on the following three claims for relief:

- The first claim for Trademark Counterfeiting Under the Lanham Act, 15 U.S.C. § 1114;
- The fifth claim for Trademark Infringement Under California Common Law – La Michoacana + Design Mark; and
- The sixth claim for Copyright Infringement, 17 U.S.C. § 501.

Pursuant to Federal Rule of Civil Procedure 41(a), PLM hereby dismisses without prejudice the remainder of claims for relief:

- The second claim for Trademark Infringement Under the Lanham Act, 15 U.S.C. § 1114;

- The third claim for Unfair Competition Under the Lanham Act, 15 U.S.C. § 1125(a) – La Michoacana Word Mark; and
- The fourth claim for Trademark Infringement Under California Common Law – La Michoacana Word Mark.

This Court shall retain jurisdiction to consider any dispute regarding or action to enforce the terms of this Consent Judgment and Permanent Injunction. The Permanent Injunction shall remain in full force and effect unless and until modified by order of this Court.

There being no just reason for delay, IT IS SO ORDERED and JUDGMENT SHALL BE ENTERED ACCORDINGLY.

DATED: _____, 2021


UNITED STATES DISTRICT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONSENT TO ENTRY

The parties hereby consent to the terms and conditions of this Consent Judgment and Permanent Injunction as set forth herein and consent to entry thereof.

SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP

By: 
LAURA L. CHAPMAN
Attorneys for Plaintiff PLM Operations LLC

TERESITA FERNANDEZ
Defendant

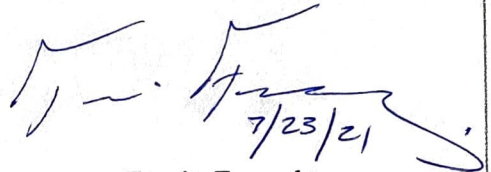
CONSENT TO ENTRY

The parties hereby consent to the terms and conditions of this Consent Judgment and Permanent Injunction as set forth herein and consent to entry thereof.

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**

By:

**Laura L. Chapman
Attorneys for Plaintiff PLM Operations
LLC**

Handwritten signature of Teresita Fernandez and the date 7/23/21.

**Teresita Fernandez
Defendant**